

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

Majority (202) 225-5074  
Minority (202) 225-5051

January 25, 2011

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
2471 Rayburn House Office Building  
Washington, DC 20515

Dear Ranking Member Cummings:

I write to respond to your concerns about the proposed rules that will be considered at the Oversight and Government Reform Committee's organizational meeting today as well as inaccuracies included in your January 24, 2011 letter.<sup>1</sup> I appreciate the opportunity to set the record straight.

You have expressed concern about two matters: procedures for issuing subpoenas and access to committee records. First, to make clear the context of your request, the rules the committee will consider on Tuesday **do not make any changes** from the previous Congress related to your concerns. Your requests would, however, change the practice and operation of committee business by giving the Ranking Minority Member unprecedented new powers to obstruct oversight.

### **Subpoena Procedures**

You have asked that I make a commitment to you similar to one that Chairman Waxman made in 2007 to Ranking Member Tom Davis to not authorize any subpoena without the concurrence of the Ranking Minority Member or a vote of the committee. Noting the exception of former Chairman Dan Burton, you state that the Waxman-Davis agreement, "has been the historical practice of all but one of your predecessors." This, however, is far from true – consider the record.<sup>2</sup>

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<sup>1</sup> Letter from Ranking Member Cummings to Chairman Issa (Jan. 24, 2011) [hereinafter Cummings Letter].

<sup>2</sup> *Id.* at 1.

Last Congress, Chairman Edolphus Towns did not continue this practice by making a similar commitment to me as Ranking Member. Under Chairman Towns the majority did, on most occasions, notify me or my staff of their intention to issue a subpoena but would rarely seek or ask for my concurrence. On multiple occasions, subpoenas were issued that either did not seek or ignored input from the minority. One such instance occurred on Friday, September 11, 2009. On this occasion, a member of the Democratic staff succinctly told Republican staff at 4:30 pm:

*"This afternoon we are going to serve a subpoena on the Media Ratings Council for documents pertaining to Arbitron's use of the Personal People Meter."*<sup>3</sup>

I was not personally notified, consulted, nor did I give my concurrence for the issuance of this subpoena.

In another case, on March 18, 2005, then Ranking Member Henry Waxman said of controversial subpoenas issued by Chairman Tom Davis:

*"These subpoenas were issued unilaterally by Tom Davis, acting at the request of the Republican leadership. There was no vote and no opportunity to debate the issue in committee."*<sup>4</sup>

I have also been informed by a reliable source that there were instances under Chairman Waxman where full consultation did not take place before the issuance of subpoenas. These examples, and indeed, the reality of the committee's history of issuing subpoenas from 2003 to the present are at clear odds with the assertions in your letter.

I furthermore, do not appreciate the mischaracterization of our conversations about appropriate consultation before the issuance of a subpoena. Your letter, supposedly paraphrasing me, states that I intend to exercise my authority "more expansively by issuing subpoenas unilaterally."<sup>5</sup> It adds that I "would not bring any subpoenas before the Committee for a vote."<sup>6</sup> While I was not always consulted about the issuance of subpoenas as Ranking Member, I have clearly and unambiguously told you that I, as Chairman, am committed to doing so going forward. I have never stated that I would not bring a subpoena before the committee and would, in fact, seriously consider such a request.

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<sup>3</sup> E-mail from John Arlington, Chief Oversight Counsel, H. Comm. on Oversight and Gov't Reform, to Jennifer Safavian, Republican Chief Counsel for Oversight and Investigations, H. Comm. on Oversight and Gov't Reform (Sept. 11, 2009).

<sup>4</sup> Statement of Rep. Henry A. Waxman, Ranking Member, H. Comm. on Gov't Reform (Mar. 18, 2005).

<sup>5</sup> Cummings Letter.

<sup>6</sup> *Id.*

## Committee Records

I am fully committed to sharing documents and records obtained through official requests of the committee with the minority. The interpretation of House and Committee rules in your letter, however, is extreme and inconsistent with past actions of the committee. Under both Chairman Towns and Chairman Waxman there were numerous occasions when the minority sought and were denied access to information related to committee business.

One such occasion occurred on August 14, 2008, when the majority staff under Chairman Henry Waxman asked that the minority staff representative leave the room as they reviewed White House documents for a possible production.<sup>7</sup>

I recognize your concern on this matter and, as a former Ranking Member, respect your obligation to ensure that Members of the minority are equally informed about committee business. I have already made a commitment to publicly release correspondence received about job killing regulations on or before February 11.<sup>8</sup> Additionally, I intend to share with you all materials I receive from the Department of Homeland Security from my January 14, 2011 request. I am including a copy of that request in this correspondence.

Both the majority and minority operate websites that encourage whistleblowers to contact the committee about waste, fraud and abuse. The majority and minority do not as a practice, however, share information about those who have contacted either side of the committee in confidence. As Chairman, I have a responsibility to ensure that actions of this committee are consistent with all rules and do not harm the committee's ability to conduct oversight or gather information about abuses or broken government.

I hope this information is helpful and can serve as the basis of an understanding.

Sincerely,



Darrell Issa  
Chairman

Enc.: Letter from Rep. Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform, to Janet Napolitano, Secretary, U.S. Dept. of Homeland Security (Jan. 14, 2011).

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<sup>7</sup> Staff Memo, Republican Comm. Staff, H. Comm. on Oversight and Gov't Reform, Document Review Pertaining to White House Production, Aug. 14, 2008.

<sup>8</sup> Letter from Chairman Issa to Ranking Member Cummings (Jan. 24, 2011).

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January 14, 2011

The Honorable Janet Napolitano  
Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Napolitano:

On July 30, 2010, I wrote to request information related to a Department of Homeland Security (DHS) directive requiring certain Freedom of Information Act (FOIA) requests to be vetted by political appointees.<sup>1</sup> The existence of that directive was first reported on July 21, 2010 by the Associated Press.<sup>2</sup>

Specifically, the AP reported that DHS political appointees required requests from “lawmakers, journalists, activist groups or watchdog organizations ... to go to the political appointees” for review, and they routinely probed “for information about the requesters and delay[ed] disclosures deemed too politically sensitive.”<sup>3</sup> In the case of requests from Congress, DHS employees were told to specify the party affiliation of the requester.<sup>4</sup>

On September 17, 2010, DHS Chief Privacy Officer Mary Ellen Callahan met with staff from the House Committee on Oversight and Government Reform and Committee on Homeland Security.<sup>5</sup> During that meeting, Ms. Callahan stated that political appointees were involved in the FOIA process only to the extent that they were made aware of significant and potentially controversial requests.<sup>6</sup> According to Ms. Callahan, political appointees reviewed FOIA response letters to spot check for typos and other grammatical errors but did not otherwise edit, redact, or delay their release.<sup>7</sup> Ms.

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<sup>1</sup> Letter from Ranking Member Darrell Issa to Secretary Janet Napolitano, Jul. 31, 2010.

<sup>2</sup> Ted Bridis, *AP IMPACT: A Political Filter for Info Requests*, ASSOC. PRESS, Jul. 21, 2010. [hereinafter Bridis]

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Meeting with DHS Chief Privacy Officer Mary Ellen Callahan and H. Comm. on Oversight and Gov't Reform and H. Comm. on Homeland Security Staff, Sept. 17, 2010, 2:00 PM.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Callahan also confirmed that DHS abandoned the practice of passing FOIA requests through political appointees in response to the AP story.<sup>8</sup>

To ensure that political interference with the FOIA process is not widespread at the federal agencies, Senator Grassley and I wrote to 29 Offices of Inspectors General (IGs) to request that they determine whether and to what extent political appointees have a role in responding to information requests.<sup>9</sup> As you know, DHS IG Skinner has initiated a review.<sup>10</sup> I understand that IG Skinner's report is forthcoming and I look forward to receiving it.

To better understand the role of political appointees in the FOIA process and so that my staff may place the statements of Ms. Callahan in the proper context, I am requesting additional information. As was mentioned in the July 21, 2010 AP story, several high ranking DHS employees were involved in development and execution of the review procedures for the FOIA requests, to include Noah Kroloff, Amy Shlossman, Jordan Grossman, and John Sandweg.<sup>11</sup> It is my understanding that the AP story was based on information received in response to a FOIA information request filed by the reporter that was itself reviewed by the individuals mentioned in the story.

For each of the requests below, produce all responsive documents dated or created between March 1, 2009 and the present. I ask that the Department produce this information as soon as possible and no later than **January 29, 2011 at 12 noon**. Please produce:

- 1) Electronic communications and memoranda between and among personnel in the Office of the Secretary and the Office of General Counsel relating to FOIA request, review and response guidelines and procedures;
- 2) Electronic communications and memoranda between and among personnel in the Office of the Secretary and the Office of General Counsel relating to specific FOIA requests that were reviewed by any person outside of the DHS FOIA office; and,
- 3) Memoranda to or from Chief Privacy Officer Mary Ellen Callahan and staff in the DHS Privacy Office relating to FOIA request, review and response guidelines and procedures.

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<sup>8</sup> *Id.*

<sup>9</sup> Letter dated August 23, 2010, from Congressman Darrell Issa and U.S. Senator Charles E. Grassley

<sup>10</sup> Letter dated August 31, 2010 from Honorable Richard L. Skinner, Inspector General of the Department of Homeland Security

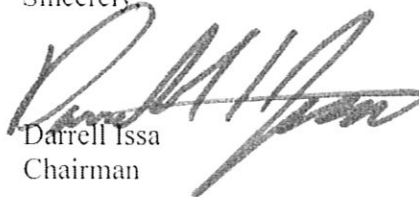
<sup>11</sup> Bridis.

The Honorable Janet Napolitano  
January 14, 2010  
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The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X.

If you have any questions, please do not hesitate to contact Jonathan Skladany or Rafael Maryahin of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Darrell Issa', written over a horizontal line.

Darrell Issa  
Chairman